

**VOLUNTARY CLEANUP CONTRACT
18-5518-NRP**

**IN THE MATTER OF
VAN NESS SIGN AND LEASING, CHARLESTON COUNTY
and
HR CHARLESTON VIII, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and HR Charleston VIII, LLC with respect to the Property located at Austin Avenue, Charleston, South Carolina. The Property includes approximately 5.87 acres identified by Tax Map Serial Number 466-00-00-023. In entering this Contract, the Department relies on the representations contained in the "Non Responsible Party Application for Voluntary Cleanup Contract" of October 21, 2017, and any amendments thereto, by HR Charleston VIII, LLC, which is incorporated into this Contract and attached as Appendix A.

AUTHORITY

This Contract is entered into pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710, et seq. (2018); the South Carolina Hazardous Waste Management Act (SCHWMA), S.C. Code Ann. §§ 44-56-10, et seq. (2018 & Supp. 2017); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.; the State Underground Petroleum Environmental Response Bank Act, (SUPERB Act), S.C. Code Ann. §§ 44-2-10, et seq. (2018 & Supp. 2017); and the Pollution Control Act, S.C. Code Ann. §§ 48-1-10 et seq. (2008 & Supp. 2017).

DEFINITIONS

1. Unless otherwise expressly provided in this Contract, terms used herein shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup

Program, and if not set forth therein, shall have the meaning assigned to them pursuant to the SCHWMA, the PCA, the SUPERB Act, or CERCLA.

- A. "HRCVIII" means HR Charleston VIII, LLC.
- B. "Beneficiaries" means HRCVIII's Non-Responsible Party lenders, signatories, parents, subsidiaries, and successors, including new purchasers, lessees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Contamination" means the presence of a contaminant, pollutant, hazardous substance, petroleum, or petroleum product.
- D. "Contract" means this Voluntary Cleanup Contract.
- E. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Existing Contamination" shall mean any Contamination present on, or under, the Site as of the execution date of this Contract.
- G. "Property" means the real property as described in the Non Responsible Party Application for Voluntary Cleanup Contract attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of HRCVIII or its Beneficiaries.
- H. "Segregated Sources" means drums, tanks, or similar discrete containers that potentially hold substances that may cause Contamination upon release to the environment.

- I. "Site" means all areas where a contaminant, petroleum, or petroleum product has been released, deposited, stored, disposed of, or placed or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel.
- J. "Waste Materials" means any Contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

FINDINGS

- 2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. Owners and Operators: The owners and operators of the Property include the following:

Virginia-Carolina Chemical Company	1926 to 1964
Socony Mobil Oil Company	1964 to 1970
Mobil Oil Company	1970 to 1976
Mobil Foundation, Inc.	1976 to 1983
Van Ness Sign & Leasing Company	1983 to 2003
Ashley II of Charleston, LLC	2003 to 2016
Ashley River Investors VIII (Van Ness), LLC	2016 to Present

- B. Property and Surrounding Areas: The Property is bounded generally by Interstate I-26 followed by King Street and a mix of commercial and residential property to the east, vacant land followed by residential property to the southeast and south, and commercial development to the west and northwest. The Property consists

of approximately 3.91 acres of highlands and 1.96 acres of low-lying marsh. The Property is undeveloped with the exception of billboard signs on the eastern portion. Although the Property appears to have never been developed, historical records indicate that phosphate mining tailings and runoff from nearby phosphate fertilizer operations may have impacted the northern portion of the Property.

- C. Investigations / Reports; Regulatory Issues: Prior to acquiring the Property in 2003, Ashley II of Charleston, LLC ("Ashley II") entered into Voluntary Cleanup Contract 03-5518-NRP ("VCC 03-5518-NRP") with the Department. Environmental characterization of the Property conducted in accordance with VCC 03-5518-NRP identified contaminants at concentrations above levels acceptable for unrestricted use in soil, sediment, and groundwater. Ashley II implemented corrective measures including soil removal in an area of the Property where the pesticide toxaphene was detected in soil above levels acceptable for a commercial use, followed by capping the excavation area with clean soil. Ashley II recorded a Declaration of Covenants and Restrictions (Declaration) on the Property on April 24, 2014 with the Charleston County Register Mesne Conveyances (Book 0401 at Page 187-193). The Department issued a Certificate of Completion for VCC 03-5518-NRP on November 19, 2014.

The South Carolina Department of Transportation ("SCDOT") has condemned a portion of the Property along the east side adjacent to I-26 for the South Carolina Port Authority Port Access road which is currently under construction.

- D. Applicant Identification: HRCVIII is a state of South Carolina limited liability company with its principal place of business located at 211 E. 7th Street, Suite 709, Austin, Texas, 78707-3218.
- E. Proposed Redevelopment: HRCVIII will acquire the Property and intends to use the Property for commercial use.

CERTIFICATIONS

3. HRCVIII has certified upon application that: 1) HRCVIII is not a Responsible Party at the Site, or a parent, successor, or subsidiary of a Responsible Party at the Site and has not had any involvement with the Property in the past other than activities performed in anticipation of participation in the Voluntary Cleanup Program; 2) its activities will not aggravate or contribute to Existing Contamination on the Site or pose significant human health or environmental risks; and, 3) it is financially viable to meet the obligations under this Contract.

RESPONSE ACTION

4. HRCVIII agrees to conduct the response actions specified in the sub-paragraphs below. An initial Work Plan shall be submitted by HRCVIII, or its designee, within ninety (90) days after the date of execution of this Contract by the Department, or such earlier or later date if approved by the Department's project manager. A report of the assessment results shall be submitted by HRCVIII, or its designee in accordance with the schedule provided in the initial Work Plan. HRCVIII acknowledges that the assessment may find distributions of Existing Contamination requiring additional assessment and/or corrective action on the Property that cannot be anticipated with this Contract. HRCVIII agrees to perform the additional assessment and/or corrective action consistent with the intended uses of the Property under the purview of this Contract; however, HRCVIII may seek an amendment of this Contract to clarify its further responsibilities. HRCVIII shall perform all actions required by this Contract, and any related actions of HRCVIII's choosing not expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department.

A. Work Plan Logistics:

- 1). The Work Plan(s) shall set forth a schedule and methods for assessment and corrective action activities detailed herein.

- 2). The Work Plan(s) shall be submitted to the Department in the form of one hard copy and one electronic copy of the entire Work Plan on a compact disk (in .pdf format).
- 3). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes, regulations, and permitting requirements (e.g., stormwater management and waste disposal regulations). HRCVIII shall identify and obtain the applicable permits before beginning any action.
- 4). The Work Plan(s) shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 5). The Work Plan(s) shall provide detailed information about the proposed sampling points, collection methods, analytical methods, quality assurance procedures, and other pertinent details of the assessment and/or corrective measures activities consistent with the following:
 - a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures.
 - b). All monitoring wells and groundwater sampling points shall be constructed in accordance with Well Standards, 6 S.C. Code Ann. Regs. 61-71(2012 & Supp. 2016). The Work Plan shall provide sufficient detail to support issuance of the well approvals by the Department.
 - c). The laboratory analyses for samples taken pursuant to the Work Plan are specified in the media-specific sub-paragraphs below, but may include any of the following:
 - i. the full EPA Target Analyte List (TAL);
 - i). EPA Target Analyte List excluding cyanide (TAL-Metals);
 - ii. the full EPA Target Compound List (TCL);
 - i). EPA Target Compound List Volatile Organic Compounds (TCL-VOCs);
 - ii). EPA Target Compound List Semi-Volatile Organic Compounds (TCL-SVOCs);

- iii). EPA Target Compound List Pesticides (TCL-Pesticides);
 - iv). EPA Target Compound List Polychlorinated Biphenyls (TCL-PCBs).
- d). All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the "United States Environmental Protection Agency Regional Screening Levels for Chemical Contaminants at Superfund Sites" (EPA RSLs) in effect at the time of sampling. The applicable Protection of Groundwater Soil Screening Level (SSL) shall be the "MCL-Based SSL", if listed. If the applicable screening criteria are lower than achievable detection levels, the analytical method shall use the lowest achievable detection levels.
- 6). The Work Plan shall include the names, addresses, and telephone numbers of HRCVIII's consulting firm(s), analytical laboratories, and HRCVIII's contact person for matters relating to this Contract and the Work Plan.
- a). The analytical laboratory shall possess applicable Certification defined in the State Environmental Laboratory Certification Program, 7 S.C. Code Ann. Regs. 61-81(2012), for the test method(s) and parameters specified in the Work Plan.
 - b). HRCVIII shall notify the Department in writing of any changes concerning the consulting firm(s), contact person(s), or laboratory identified in the Work Plan.
- 7). The Department will notify HRCVIII in writing of approvals or deficiencies in the Work Plan.
- 8). HRCVIII, or its designee, shall respond in writing within thirty (30) days of receipt of any comments on the Work Plan by the Department.
- 9). HRCVIII shall begin implementation of the Work Plan as soon as reasonably possible after receipt of written approval of the Work Plan by the Department.
- 10). HRCVIII shall inform the Department at least five (5) working days in advance of all field activities conducted pursuant to the Work Plan, and shall

allow the Department, or its authorized representatives, to take duplicates of any samples if desired.

- 11). HRCVIII shall preserve items on the Property that may: 1) provide evidence of a Potentially Responsible Party's involvement at the Site; 2) lead to the discovery of other areas of Contamination at the Site; or 3) contain environmental information related to the Site. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. HRCVIII shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

B. Report Logistics

- 1). Report(s) shall be prepared in accordance with accepted industry standards and shall be certified by signature and seal of a Professional Engineer or Professional Geologist duly licensed in South Carolina.
- 2). The report(s) of assessment and/or corrective measures activities shall include a discussion of investigation methods and any deviations from the Department approved Work Plan. Report(s) shall also include tables and figures to summarize all data, a surveyed map documenting sampling locations, documentation of field observations including well core logs, sample descriptions, field screening results, and all laboratory analytical data.
- 3). All report(s) shall be submitted to the Department in the form of one hardcopy and one electronic copy of the entire report on a compact disk (in .pdf format).

C. Assess Waste Materials and Segregated Sources:

- 1). HRCVIII shall characterize for disposal any Waste Material and Segregated Sources that may be discovered on the Property at any time during assessment, corrective action, or development activities in accordance with applicable regulations.
- 2). Upon discovery of any Segregated Source that has not yet released all of its contents to the environment, HRCVIII shall expeditiously stabilize or remove the Segregated Source from the Property.
- 3). HRCVIII shall immediately notify the Department if a release of Contamination occurs as a result of its assessment, stabilization or removal actions. HRCVIII shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

D. Conduct a well survey:

- 1). HRCVIII shall map all public and private wells used for drinking water supply within a one-half mile radius of the Property, and wells used for irrigation or other non-drinking water use within a one-quarter mile radius.
- 2). HRCVIII shall report sufficient information to the Department to allow the Department to secure permission to sample the wells. At a minimum, this information shall include the: 1) Location of the well; 2) Identity and mailing address of the well owner; and, 3) Telephone number, if publicly available or otherwise known to HRCVIII, of the well owner or occupant of the residence served by the well.

E. Evaluate condition of the soil exposure barrier:

- 1). HRCVIII shall conduct an evaluation of the current condition of the soil cover installed in 2008 over an area of contaminated soil.
 - a). The evaluation shall include, but not necessarily be limited to, evaluation of the depth and aerial extent of the soil cover, and evaluation of the condition of vegetative growth keeping the soil cover in place.

- b). HRCVIII shall report on the condition of the soil cover and propose any actions necessary to repair or maintain the soil cover.
- c). The report shall include a plan and schedule for future inspection and maintenance of the soil cover.

F. Institute reasonable Contamination control measures:

- 1). HRCVIII shall remove from the Property and properly dispose of all Waste Materials and Segregated Sources of Contamination in accordance with applicable regulations based on characterization results.
 - a). HRCVIII shall document the characterization results and ultimate disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.
 - b). Subject to Department approval, buried Waste Materials, if present, may be stabilized in place on the Property in a manner that will effectively limit or prevent human exposure and release of contaminants to the environment. If any Waste Materials are to be stabilized in place, HRCVIII shall propose plans for stabilization of the Waste Materials in a Corrective Measures Plan in accordance with Paragraph 4.F.2 below. HRCVIII shall also enter into a Declaration of Covenants and Restrictions to document the area of stabilization, and to maintain the stabilization measures in accordance with Paragraph 9 of this Contract.
- 2). HRCVIII shall take reasonable measures to effectively limit or prevent human exposure to Existing Contamination in any media on the Property. HRCVIII shall evaluate options for corrective measures in an Analysis of Brownfields Cleanup Alternatives (ABCA). Upon Department approval of the corrective measures selected in the ABCA, HRCVIII shall prepare a Corrective Measures Plan. The Corrective Measures Plan shall be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property.

- a). Corrective measures shall be required for Contamination present in any media on the Property with concentrations in excess of appropriate human-health risk-based exposure standards with plausibly complete routes of exposure.
- b). HRCVIII may request Department approval to conduct a site-specific risk assessment to determine levels of Contamination that are acceptable for the intended use of the Property. The risk assessment shall be conducted in accordance with EPA Risk Assessment Guidance for Superfund. Prior to conducting the risk assessment, HRCVIII shall submit for Department approval, an overview of risk assessment assumptions including identification of Contamination exposure routes, the type and duration of possible exposures, the magnitude of exposure, and any data gaps that need to be addressed to complete the risk assessment.
- c). Corrective measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the Contamination. Subject to Department approval, corrective measures may include a land use restriction in accordance with Paragraph 9 (Declaration of Covenants and Restrictions) of this Contract
- d). If required, vapor intrusion control measures shall be designed to effectively mitigate vapor intrusion risk to a 10^{-6} risk for carcinogens and a hazard quotient/hazard index of 1 for non-carcinogens based on current EPA RSLs and guidance on vapor intrusion. All vapor intrusion control measures shall include monitoring to confirm that the vapor mitigation system is effective, and procedures to ensure and document proper and effective operation and maintenance of the vapor intrusion mitigation system for as long as it is required at the Property. The Department shall give reasonable consideration of data or other demonstration that shows any unacceptable indoor air contaminant concentrations do not result from the subsurface conditions.

- e). Upon completion of any corrective measures, HRCVIII shall provide a Corrective Measures Report to document satisfactory completion of the corrective measures for Department review and approval prior to obtaining a Certificate of Completion.
- 3). In the event that development of the Property will require disturbance of contaminants in soil or groundwater, HRCVIII shall propose a Media Management Plan. The Media Management Plan shall address management of contaminated media when encountered on the Property, its characterization if necessary for offsite disposal, and identification of the final disposal location for all contaminated media.
- 4). A demarcation barrier and clean soil cover was installed on a portion of the Property in 2008 in accordance with VCC 03-5518-NRP to prevent exposure to contaminated soil remaining beneath the soil cover. In accordance with VCC 03-5518-NRP and the Declaration of Covenants and Restrictions, this demarcation barrier and soil cover must be maintained and monitored for future use of the Property. HRCVIII shall propose a Stewardship Plan that shall identify procedures for management of contaminated soil that may be encountered as a result of any disturbance of the demarcation barrier and soil cover, and for repair or replacement of the demarcation barrier and soil cover.

HEALTH AND SAFETY PLAN

- 5. HRCVIII shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan shall be submitted to the Department in the form of one electronic copy on compact disk (in .pdf format). HRCVIII agrees that the Health and Safety Plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by HRCVIII.

PUBLIC PARTICIPATION

6. HRCVIII and the Department will encourage public participation to implement this Contract as follows:

- A. The Department will provide notice, seek public comment, and initiate a thirty (30) day claim contribution notification period in accordance with established procedures consistent with S.C. Code Ann. §44-56-750 upon signature of this Contract by HRCVIII.
- B. HRCVIII shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected no later than one (1) day after the Department's public announcement about the Contract in a newspaper of general circulation in the community.
 - 1). The sign(s) will state "Voluntary Cleanup Project by HR Charleston VIII, LLC under Voluntary Cleanup Contract 18-5518-NRP with the South Carolina Department of Health and Environmental Control." The sign(s) shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of HRCVIII. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".
 - 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the Property without intruding onto the Property.
 - 3). HRCVIII shall submit photographs of the sign(s) and a Property drawing showing the location(s) of the sign(s). The photographs shall be submitted to the Department within ten (10) days of erecting the sign(s).
 - 4). HRCVIII agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.

- 5). HRCVIII shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the Contract period until a Certificate of Completion is issued on the Property.
- 6). The sign(s) may be removed to accommodate building or grading activities; however, HRCVIII shall restore the sign(s) within two (2) days to its original location, or other publicly accessible location upon notice to the Department.

PROGRESS UPDATES

7. HRCVIII shall submit periodic written updates to the Department's project manager until such time as all activities related to the Property are complete pursuant to this Contract. The first update shall be due within thirty (30) days of the execution date of this Contract and semi-annually thereafter.
 - A. The updates may be in summary letter format, but should include information about:
 - 1). The actions taken under this Contract during the previous reporting period;
 - 2). Actions scheduled to be taken in the next reporting period;
 - 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
 - 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.
 - B. The Department's project manager may allow an extended schedule between updates based on case specific conditions.

SCHEDULE

8. HRCVIII shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances cause a delay in implementation of the response actions, the Department may require

implementation of interim measures to stabilize Contamination or prevent unacceptable exposures. HRCVIII shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

9. A Declaration of Covenants and Restrictions ("Declaration") on the Property was recorded with the Charleston County Register of Mesne Conveyance on April 25, 2014 in Book 0401, Page 187, and is incorporated into this Contract as Appendix B. The Declaration restricts use of the Property to prohibit residential, agricultural, recreational, child day care or elder care facilities; prohibits groundwater use; and requires maintenance of a soil exposure barrier that has been installed on a portion of the Property. HRCVIII and its Beneficiaries shall maintain these restrictions on the Property. Any future amendments to the Declaration shall be approved by the Department and implemented in accordance with the procedures identified below:
 - A. The Department shall prepare and sign the Amended Declaration prior to providing it to HRCVIII. An authorized representative of HRCVIII or its Beneficiaries shall sign the Amended Declaration within ten (10) days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.
 - B. HRCVIII or its Beneficiaries shall record the executed Amended Declaration with the Registrar of Deeds for the county where the Property is located.
 - C. HRCVIII or its Beneficiaries shall provide a copy of the recorded Amended Declaration to the Department within sixty (60) days of the Department's execution. The copy shall show the date and Book and Page number where the Amended Declaration has been recorded.
 - D. In the event that Contamination exceeds levels acceptable for unrestricted use (EPA RSLs for residential use and/or MCLs) on a portion of the Property,

HRCVIII or its Beneficiaries may create a new parcel of that portion of the property that will be subject to the Declaration or the Amended Declaration.

- E. The Declaration, and any amendments thereto, shall be noted on the master deed of any planned development for the Property and noted, or referenced thereafter, on each individual deed of property subdivided from the Property and subject to the Declaration and any amendments thereto.
- F. The Declaration and any amendments thereto shall reserve a right of entry and inspection for HRCVIII or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.
 - 1). HRCVIII or its Beneficiaries shall ensure that the restrictions established by the Declaration and any amendments thereto remain on any subdivided property.
 - 2). HRCVIII or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Declaration or the Amended Declaration regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.
- G. The Declaration and any amendments thereto shall provide that the Department has an irrevocable right of access to the Property after HRCVIII acquires the Property, and such right of access shall remain until remediation is accomplished for unrestricted use and monitoring is no longer required. Such access shall extend to the Department's authorized representatives and all persons performing response actions on the Property under the Department's oversight.
- H. HRCVIII or its Beneficiaries, or the individual or entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Declaration and any amendments thereto to the Department. The report

shall be submitted by May 31st in a manner and form prescribed by the Department.

- I. The Department may amend the Declaration in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Property change; however, said amendment shall not be applied retroactively unless expressly provided for in the legislation. An amendment may strengthen, relax, or remove restrictions based on the EPA RSL Summary Table in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the EPA RSL Summary Table. An amendment to the Declaration shall be duly executed and recorded using procedures similar to those detailed above.

NOTIFICATION

10. All notices required to be given by either party to the other shall be in writing. Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the Contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of notice shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail by which notice shall be deemed to occur seven (7) days after the postmark date; 2) Certified or Registered Mail by which notice shall be deemed to occur on the date received as shown on the receipt; 3) Commercial delivery service company by which notice shall be deemed to occur on the date received as shown on the receipt; or, 4) hand delivery to the other party.

- A. All correspondence, notices, work plans, and reports shall be submitted to:

Angela Gorman
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

B. All correspondence and notices to HRCVIII shall be submitted to HRCVIII's designated contact person who as of the effective date of this Contract shall be:

David Bodenman, Vice President
HR Charleston V III, LLC
211 E. 7th Street, Suite 709
Austin, Texas 78701-3218

FINANCIAL REIMBURSEMENT

11. HRCVIII or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C.Code Ann. §44-56-750(D). The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereto, and may include costs related to this Contract and incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to HRCVIII on a quarterly basis. All costs are payable within thirty (30) days of the Department's invoice submitted to:

David Bodenman, Vice President
HR Charleston VIII, LLC
211 E. 7th Street, Suite 709
Austin, Texas 78701-3218

- A. Failure to submit timely payment for costs upon receipt of the Department's invoice is grounds for termination of the Contract pursuant to paragraph 16 herein.
- B. Payment for costs incurred by the Department pursuant to this Contract shall become immediately due upon termination of the Contract by any party pursuant to paragraph 16 herein.

ACCESS TO THE PROPERTY

- 12. HRCVIII agrees the Department has an irrevocable right of access to the Property for environmental response matters after HRCVIII acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

- 13. A Certificate of Completion shall be issued to HRCVIII or its Beneficiaries for the Property under this Contract as follows:
 - A. HRCVIII or its Beneficiaries shall request a Certificate of Completion pursuant to S.C. Code Ann. § 44-56-750(C)(1) after the response actions are completed and any required Declarations are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.
 - B. Pursuant to § 44-56-750(C)(1) the Department shall issue the Certificate of Completion with its covenant not to sue upon determining that HRCVIII or its

Beneficiaries has successfully and completely complied with the Contract and the voluntary cleanup approved under S.C. Code Ann. §§ 44-56-710 through 760.

C. The Department may issue a Provisional Certificate of Completion if the substantive response actions required under this Contract are complete and a required Declaration has been recorded but all actions under this Contract have not been completed due to Property-specific circumstances.

- 1). A Provisional Certificate of Completion will include specific performance standards that HRCVIII or its Beneficiaries shall continue to meet.
- 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if HRCVIII or its Beneficiaries do not satisfactorily complete the requirements of the Contract as stipulated in the Provisional Certificate of Completion.

ECONOMIC BENEFITS REPORTING

14. HRCVIII or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two (2) years after the execution date of this Contract, and annually thereafter until issuance of the Certificate of Completion. Within two years after any redevelopment of the Property is complete, HRCVIII or its Beneficiaries shall submit a report of economic benefits related to the redevelopment. HRCVIII or its Beneficiaries shall summarize the new operations at the Property, the number of jobs created, the amount of property taxes paid, and the total amount invested in the Property for property acquisition and capital improvements.

CONTRACT OBLIGATIONS AND PROTECTIONS INURE

15. The terms, conditions, obligations and protections of this Contract apply to and inure to the benefit of the Department, HRCVIII, and its Beneficiaries as set forth

below. The following stipulations apply to ensure the transition of all obligations and protections to successive Beneficiaries for any portion of the Property:

- A. HRCVIII or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.
- B. HRCVIII and its Beneficiaries shall not allow residential occupancy on any portion of the Property prior to obtaining the Certificate of Completion or a Provisional Certificate of Completion specific to that portion of the Property allowing residential occupancy.
- C. If the Certificate of Completion has not been issued, HRCVIII or its Beneficiaries shall request approval from the Department prior to transferring the obligations and protections of this Contract to a new person or entity. The Department shall not unreasonably withhold its approval upon receipt of a Non-Responsible Party Application for Voluntary Cleanup Contract documenting that the new person or entity:
 - 1). Is not a Responsible Party for the Site;
 - 2). Has sufficient resources to complete the activities of this Contract;
 - 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract;
 - 4). Will assume the protections and all obligations of this Contract; and,
 - 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.
- D. If the Certificate of Completion has been issued and the portion of the Property is subject to a Declaration or other ongoing obligation pursuant to this Contract, HRCVIII or its Beneficiaries shall provide written notification to the Department

identifying the new individual or entity within thirty (30) days after the effective date of the ownership change or other possessory transfer of the Property.

- 1). The notification shall include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the Contract and the Declaration, and that it will assume the ongoing obligations and protections of this Contract.
- 2). This requirement is waived for an individual or entity acquiring a portion of the Property for individual commercial use provided the Declaration is noted on the master deed for the planned development, and the Department has approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.

CONTRACT TERMINATION

16. HRCVIII, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty (30) days advance written notice to the other party. Termination shall be subject to the following:

A. The Department may not terminate this Contract without cause and before termination, shall provide HRCVIII or its Beneficiaries an opportunity to correct the cause(s) for termination, which may include, but is not limited to, the following:

- 1). Failure to complete the terms and conditions of this Contract;
- 2). Change in HRCVIII's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
- 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
- 4). Failure of HRCVIII or its Beneficiaries to implement appropriate response actions for additional Contamination or releases caused by HRCVIII or its Beneficiaries;

- 5). Knowingly providing the Department with false or incomplete information or knowing failure to disclose material information;
 - 6). Failure by HRCVIII or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this Contract; or,
 - 7). Failure by HRCVIII or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of HRCVIII's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.
- B. Should HRCVIII or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards caused or contributed by HRCVIII or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment.
- C. Termination of this Contract by any party does not waive the Department's authority to require response action under any applicable state or federal law.
- D. Termination of this Contract by any party does not end the obligations of HRCVIII or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract. Payment for such costs shall become immediately due.
- E. Upon termination, the protections provided under this Contract shall be null and void as to any party who participated in actions giving rise to termination of the Contract. Revocation of protections shall also apply to that party's lenders, parents, subsidiaries, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party who participated in actions giving rise to termination of the contract. The protections will continue

for any party who has received protections through a Certificate of Completion for this Contract, and who did not participate in the actions giving rise to the termination.

ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. HRCVIII and its Beneficiaries are entitled to the protections and benefits in regard to Existing Contamination provided by South Carolina statutes as follows:

A. Effective on the date this Contract is first executed by the Department:

- 1). Protection from contribution claims under CERCLA §113, 42 U.S.C. § 9613 and SCHWMA § 44-56-200.
- 2). Protection from third-party claims as provided by S.C. Code Ann. § 44-56-750(H).
- 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to the Income Tax Act, S.C. Code Ann. § 12-6-3550 (2014).

B. Effective on the date the Certificate of Completion is issued by the Department.

- 1). The Department's covenant not to sue HRCVIII and its Beneficiaries for Existing Contamination but not for any Contamination, releases and consequences caused or contributed by HRCVIII or its Beneficiaries.
- 2). Specific tax credits or additional benefits expressly contingent in South Carolina statutes on issuance of the Certificate of Completion.

C. These Protections and Benefits do not apply to any Contamination, releases, and consequences caused or contributed by HRCVIII or its Beneficiaries. The Department retains all rights under State and Federal laws to compel HRCVIII and its Beneficiaries to perform or pay for response activity for any Contamination, releases and consequences caused or contributed by HRCVIII or its Beneficiaries.

RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than HRCVIII and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than HRCVIII and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

RESERVATION OF RIGHTS BY HRCVIII

19. HRCVIII retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. HRCVIII and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for Contamination, releases, and consequences they cause or contribute. However, HRCVIII and its Beneficiaries agree to undertake the requirements of this Contract.

BURDEN OF PROOF

20. HRCVIII and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered Contamination is not caused or contributed by HRCVIII or its Beneficiaries. HRCVIII and its Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered Contamination. For purposes of this clause, newly discovered Contamination means finding types of Contamination not previously identified at the Property or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY HRCVIII AND ITS BENEFICIARIES

21. In consideration of the protections from the Department under this Contract, HRCVIII and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Property pursuant to this Contract. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or negligent acts or omissions, or the Department's willful breach of this Contract.

[Remainder of page left blank]

SIGNATORS

22. The signatories below hereby represent that they are authorized to and do enter into this Contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL**

BY:

DATE:

Daphne G. Neel, Chief
Bureau of Land and Waste
Management


DATE:

Reviewed by Office of General Counsel

HR CHARLESTON VIII, LLC

BY:

DATE:



MARCH 5, 2018

DAVID BODENMAN, V.P.

Printed Name and Title

APPENDIX A

Application for Non-Responsible Party Voluntary Cleanup Contract

HR Charleston VIII, LLC

October 21, 2017

APPENDIX B

Declaration of Covenants and Restrictions



Non Responsible Party Application for Voluntary Cleanup Contract

I. Applicant Information

1. Applicant is a: ☒ Single Entity ☐ Co-Entity (Each Co-Entity must complete items 1-8)
2. Applicant Type: ☐ Private Individual /Sole Proprietorship ☒ For-profit Business (Corp., Partnership, etc.) ☐ Tax-Exempt Trust/ Corporation/ Organization ☐ Government / Other Public Funded Entity

3. Applicant's Legal Name HR Charleston VIII, LLC

4. Contract Signatures for this Applicant

a. Authorized Signatory

David Bodenman

Vice President

dbodenman@highlandresources.net

Name

Title

Email

211 E. 7th Street, Suite 709

512-380-5553

512-474-6491

Address

Phone1

Phone2

Austin

Texas

78701-3218

City

State

Zip

b. Other Signatories ☐ None

Name	Title	Phone	Email	Signature Required On Contract?
Welden Johnston	Vice President	(512) 380 - 5559	wjohnston@highlandri.co	<input type="checkbox"/>
		() -		<input type="checkbox"/>
		() -		<input type="checkbox"/>

5. Physical Location of Applicant's Headquarters

211 E. 7th Street

Suite 709

Street address

Suite Number

Austin

Texas

78701-3218

City

State

Zip

6. Mailing address: ☒ Same as Authorized Signatory Go to question 7

Contact person (if different from Authorized Signatory)

Title

OCT 21 2017

Street Number or PO Box

Phone1

Phone 2

City

State

Zip

Email

SITE ASSESSMENT,
REMEDICATION &
REVITALIZATION

7. Company Structure Information ☐ Not-applicable (Local Government, Sole Proprietorship, Private Individual) - Go to Question #8

a. Company is Incorporated/ Organized/ Registered in South Carolina (state)

b. List all principals, officers, directors, controlling shareholders, or other owners with >5% ownership interest.

Attach additional pages if needed.

Name

Name

Highland Management, Inc.

c. Is the applicant a subsidiary, parent or affiliate of any other business organization not otherwise identified on this form?

☐ Yes ☒ No

d. If yes, identify all affiliations:

8. Non-Responsible Party Certification

By signature below, it is affirmed that no person or entity identified anywhere above:

1. Is a current owner of the property
2. Is a Responsible Party for the site
3. Is a parent, successor, or subsidiary of any Responsible Party or owner of the property
4. Has had any involvement with the property in the past other than activities performed in anticipation of participation in the Voluntary Cleanup Program

Authorized Signatory

Co Signatories

II. Property Information

9. Location

a. Physical Address Austin Avenue TMS # 466-00-00-023 (Van Ness)b. County Charleston, South Carolina, 29405c. ☐ Property is outside any municipal boundaries ☒ Property is inside the municipal limits of Charleston
(town/city)

10. List any Companies or Site names by which the Property is known

11. Total Size of Property Covered by this Contract 5.87 Acres12. How many parcels comprise the Property? One (1)

13. Current Zoning (general description)

Commercial

14. a. Does the property have any above- or below-ground storage tanks? ☐ Yes ☒ No

b. If Yes, provide information on the number and capacity of the tanks, their contents, and whether they will be retained, or closed and/or removed.

15. Parcel Information *Complete the information below for each Parcel (attach additional sheets if needed)*

a. Tax Map Parcel# 466-00-00-023
 b. Acreage 5.87
 c. Current Owner Ashley II of Charleston
 d. Owner Mailing Address Stowell Gray Robinson
1310 Gadsden Street
Columbia, SC 29201
 e. Contact Person for Access R. William Metzger, Jr.
 f. Access Person's Phone # (803) 227-1130
 g. Is Parcel Currently Vacant? ☒ Yes ☐ No
 h. Buildings on the parcel? ☐ None
 (check all that apply) ☒ Demolished/Ruins
☐ Intact, To be demolished
☐ Intact, To be re-used
 i. Business/facility operations ☐ Never Operated on the parcel
☐ Not operating since _____
 (approx date)
☐ In operation: nature of the
 business _____

a. Tax Map Parcel# _____
 b. Acreage _____
 c. Current Owner _____
 d. Owner Mailing Address _____
 e. Contact Person for Access _____
 f. Access Person's Phone # _____
 g. Is Parcel Currently Vacant? ☐ Yes ☐ No
 h. Buildings on the parcel? ☐ None
 (check all that apply) ☐ Demolished/Ruins
☐ Intact, To be demolished
☐ Intact, To be re-used
 i. Business/facility operations ☐ Never Operated on the parcel
☐ Not operating since _____
 (approx date)
☐ In operation: nature of the
 business _____

a. Tax Map Parcel# _____
 b. Acreage _____
 c. Current Owner _____
 d. Owner Mailing Address _____
 e. Contact Person for Access _____
 f. Access Person's Phone # _____
 g. Is Parcel Currently Vacant? ☐ Yes ☐ No
 h. Buildings on the parcel? ☐ None
 (check all that apply) ☐ Demolished/Ruins
☐ Intact, To be demolished
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 f. Access Person's Phone # _____
 g. Is Parcel Currently Vacant? ☐ Yes ☐ No
 h. Buildings on the parcel? ☐ None
 (check all that apply) ☐ Demolished/Ruins
☐ Intact, To be demolished
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 (approx date)
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 b. Acreage _____
 c. Current Owner _____
 d. Owner Mailing Address _____
 e. Contact Person for Access _____
 f. Access Person's Phone # _____
 g. Is Parcel Currently Vacant? ☐ Yes ☐ No
 h. Buildings on the parcel? ☐ None
 (check all that apply) ☐ Demolished/Ruins
☐ Intact, To be demolished
☐ Intact, To be re-used
 i. Business/facility operations ☐ Never Operated on the parcel
☐ Not operating since _____
 (approx date)
☐ In operation: nature of the
 business _____

III. Property Redevelopment

16. Describe the intended re-use of the property:
(attach additional sheets if necessary)

Commercial

17. a. Will the future use include any chemical processes, petroleum or chemical storage and handling, on-site waste disposal, or generate any hazardous substances? ☐ Yes ☒ No
b. If Yes, identify the substances and discuss steps that will be taken to prevent their release to the environment.

18. Will redevelopment lead to the creation of permanent jobs on the property? ☒ Yes Anticipated Number Unknown
☐ No

19. Projected Increase to the Tax Base as a result of this redevelopment: \$ TBD

20. a. Will there be Intangible benefits from this redevelopment such as:
☒ LEED, Earth Craft, EnergyStar, or similar certification of Sustainable Development
☐ Creation / Preservation of Green Space on the Property
☐ Deconstruction/ Recycling of demolition or building debris
☐ Other _____

b. Please Describe:

21. Anticipated date of closing or acquiring title to the property December / 31 / 2017

22. Redevelopment Certification

By signature below, the applicant(s) affirm that their proposed use and activities will not knowingly aggravate or contribute to existing contamination or pose significant human health or environmental risks on the property.



Signature(s)

IV. Project Management And Financial Viability (Co-Entities, refer to instruction sheet)

23. Environmental Consulting Firm
☐ None as of this application date

SCS Engineers

Company

1360 Truxtun Avenue, Ste. 100

North Charleston

South Carolina

29405

Address

City

State

Zip

Nina Marshtein, P.G.

(843) 746-8525

nmarshtein@scsengineers.com

Project Contact1

S.C PE/PG Reg. #

Phone1

Phone 2

email

Wanda Farmer, REM

(843) 746-8525

Project Contact 2

S.C PE/PG Reg. #

Phone1

Phone 2

email

24. Legal Counsel (Optional)
Womble Bond Dickinson, US, LLP
Firm
James M. Wilson (843) 720-4640
Attorney Phone1 Phone 2
5 Exchange Street Charleston South Carolina 29401 james.wilson@wbd-us.com
Street Number or PO Box City State Zip email

25. Applicant's Billing Address ☒ Same as Contact person in #6 above Go to question #26

Financial Contact Title
Company Phone
Address
City State Zip

26. **Financial Viability**

By signature(s) below, the applicant agrees to:

1. Pay the Department's costs upon receipt of invoices for implementing the Voluntary Cleanup Program for this Property, and
2. Provide financial statements, if requested, to document financial viability to conduct the response actions on the Property.

☐ Waiver Requested (Check Box If applicable)

The applicant is a Local Government or qualifies as a 501(c) Non-Profit Organization, and requests waiver of some Departmental costs of implementing this contract.

Signatures

V. Application Completion (The following are required along with this form. Check applicable boxes)

27. The Legal Description of the Property is attached as a: ☐ Plat Map ☒ Metes and Bounds Text ☐ Both

28. The Phase I Environmental Site Assessment Report is attached as a:

☒ New report completed in the past six months by SCS Engineers 10/31/2017

(Name of Environmental Firm)

☐ Older report updated in the past six months by

(Name of Environmental Firm)

29. Environmental sampling data and other reports: (check one)

☐ The Applicant is not aware of any environmental testing on the property

☒ The Applicant believes the Department already has all environmental data in its files on: Van Ness VCC 03-5518-NRP

☐ The Following reports are attached:

(Site Name)

Report Date

Report Name

Environmental Firm

30. Mailing addresses of Former Owners, Operators and other Potentially Responsible Parties:(check one)

☐ Enclosed with this Application as an Attachment

☒ Will be submitted along with (or before) the signed contract

31. The applicants attest by signature below that this application is accurate to their best knowledge. Furthermore, the applicants request DHEC evaluate the Property for inclusion in the Brownfields Voluntary Cleanup Program and draft a Non-Responsible Party Contract for the Property.

Signature(s)

This Section for Department Use Only

Assigned File Name		
Eligible for NRP Contract	Y N	
Assigned File Number		
Assigned Contract Number		

LEGAL DESCRIPTION

ALL that piece, parcel or tract of land, situate, lying and being in the County of Charleston, South Carolina, shown and designated as "Tract C" on a plat by E. M. Seabrook, Jr., Inc., entitled "PLAT OF THREE TRACTS OF LAND SITUATE IN CHARLESTON COUNTY, S.C. AND OWNED BY MOBIL OIL CORPORATION. TRACT A CONTAINS 9.40 ACRES HIGHLAND AND 1.22 ACRES± MARSH, TRACT B CONTAINS 21.32 ACRES HIGHLAND AND 13.17 ACRES MARSH, AND TRACT C CONTAINS 3.91 ACRES HIGHLAND AND 1.96 ACRES MARSH", dated November 6, 1972 and recorded in Plat Book AB, Page 115, RMC Office for Charleston County, South Carolina and having such size, shape, buttings, boundings, dimensions and location as will appear by reference to said plat which is incorporated herein by reference, be all the dimensions and measurements shown thereon a little more or less.

TMS No. 466-00-00-023